

**Memorandum of Decision: 04-20190047R**  
**Gross Retail Tax**  
**For the Year 2018**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

**HOLDING**

Automobile Titling Service was entitled to a refund of overpaid sales tax because, in arranging to register and title a car on behalf of one of its customers, it overpaid the original sales tax amount. Automobile Titling Service was the entity which paid the tax and was the entity eligible to receive any refund of overpaid sales tax.

**ISSUE**

**I. Gross Retail Tax - Automobile Sales Tax.**

**Authority:** IC § 6-8.1-9-1(a).

Taxpayer argues that the Department erred in denying Taxpayer a refund of Indiana sales tax and in finding that Taxpayer was not the entity entitled to claim that refund.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of providing automobile titling services to car dealerships and their customers. An Indiana resident purchased a used car from an Illinois car dealer. Indiana resident paid \$21,195 for the car and "traded in" another vehicle in the transaction. The Illinois dealer allowed a "gross trade-in allowance" of \$23,000. Given the value of the trade-in, the Illinois dealer charged no sales tax.

Taxpayer proceeded to register the Indiana resident's car with the Indiana Bureau of Motor Vehicles ("BMV"). The BMV correctly listed the vehicle's sale price as \$21,195 but listed the trade-in allowance as \$3,000 with the amount of tax due as \$1,273.65. Taxpayer states that the BMV made a clerical error in listing the trade-in allowance as \$3,000 instead of \$23,000.

Taxpayer proceeded to pay - along with a series of similar transactions - the BMV \$1,288.65. That amount represented the \$1,273.65 sales tax amount along with a \$15.00 "Transportation Infrastructure Improvement" fee.

Taxpayer sought a refund of tax on the ground that it should not have paid the amount billed because the assessment was based on the BMV's clerical error. To that end, Taxpayer submitted a form GA-110L "Claim for Refund" asking for a refund of \$1,288.65. The Indiana Department of Revenue ("Department") reviewed the claim and denied the refund. In a letter dated January 2019, the Department explained:

DOR has reviewed the claim and denies the claim in full in the amount of \$1,288.65 based upon the [following] reason(s) . . . IC [§] 6-8.1-9-1 provides in part: If a person has paid more tax than due . . . he may file a claim for refund. In this particular situation the individual that created the taxable event, is not the person applying for the refund.

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for the protest. This Memorandum of Decision Results.

**I. Gross Retail Tax - Automobile Sales Tax.**

**DISCUSSION**

The issue is whether Taxpayer is entitled to claim the refund of overpaid sales tax. At the outset, it is clear from the documentation supplied by Taxpayer that the BMV erred when it stated that the value of the customer's

trade-in was \$3,000 instead of the \$23,000 clearly provided for on the original invoice.

The issue is addressed at IC § 6-8.1-9-1(a) which provides as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

The statute provides that if a "person" has paid more tax than due, that same "person" may claim the refund.

In this case, Taxpayer has provided documentation establishing that it was the "person" which paid the erroneous sales tax to the BMV and that it was not the Illinois dealer or the Indiana customer who paid the tax. Therefore, Taxpayer is the "person" entitled to claim the overpayment.

However, Taxpayer's calculation is somewhat flawed. Taxpayer states that it is entitled to a refund of \$1,288.65 which consists of the sales tax and the \$15.00 "Transportation Infrastructure Improvement" fee. Taxpayer makes no argument - and the Department finds no reason - that the \$15 Indiana fee is inapplicable.

Taxpayer was the "person" which paid the tax and is the "person" eligible to receive any refund of overpaid sales tax.

### **FINDING**

On the sole question of whether Taxpayer is the entity entitled to receive the refund of overpaid sales tax, Taxpayer's protest is sustained.

February 27, 2019

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